IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6577 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KASHIBEN GAURISHANKER

Versus

STATE OF GUJARAT

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Appearance:

MR JITENDRA M PATEL for Petitioners

M/S PATEL ADVOCATES for Respondent No. 1

MR MUKUND M DESAI for Respondent No. 2 to 11

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CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 09/03/2000

ORAL JUDGEMENT

This petition is filed for quashing and setting the order passed by the Mamlatdar and Agricultural Land Tribunal and confirmed by the Dy. Collector as also by the Gujarat Revenue Tribunal.

2. The case of the petitioner was that Joshi Manishankar Bhanji and his brothers made an application in the prescribed Form No.2 showing the lands of Village Dharuka, Timba, Tal. Umarala, District : Bhavnagar belonged to them. On receipt of the application, proceedings were initiated by the Mamlatdar and A.L.T. in accordance with the provisions of Gujarat Lands Ceiling Act, 1960 (hereinafter referred to as `the Act') and order was passed declaring certain lands as excess land to which the provisions of the Act would apply. It appears that since by the time Manishankar died, the order was set aside by the Dy. Collector and the matter was remanded to the A.L.T. Again, the matter was decided by the Mamlatdar and A.L.T. and the order was passed which was confirmed in Appeal as well as in Revision.

3. Several contentions were raised by Mr. J.M. Patel, learned counsel for the petitioners. It was submitted that the land was not irrigated land and the authorities have committed an error of law apparent on the fact of the record in treating the land as irrigated land. He also submitted that joint inquiry was held against all Khatedars which resulted into injustice and prejudice was caused to the petitioners and the orders are liable to be quashed and set aside. It was urged that in view of the death of Manishankar, proceedings were null and void and they could not have been continued thereafter. It was argued that provisions of Section 6 (3 B) have not been appreciated in their proper perspective and applied which has resulted in prejudice to the petitioners. Finally, it was submitted that two pieces of land to the extent of 7 Acres and 02 Gunthas and 26 Gunthas of Survey Numbers 20/1 and 20/2 respectively ought to have been excluded from the operation of the Act, in view of clear and categorical finding recorded by the Dy. Collector that they were sold on September 9, 1974 and the transfer was not effected with a view to defeat the provisions of the Act. On these facts, the matter deserves to be remanded to Mamlatdar and A.L.T. to decide the same afresh in accordance with law.

4. Mr. M.A. Bukhari, learned A.G.P., on the other hand, submitted that an order was passed by Mamlatdar and A.L.T. after considering the facts and circumstances of the case, as well as evidence on record. The Mamlatdar and A.L.T. recorded certain findings of fact and declared as excess land to which the provisions of the Act would apply. The said findings were confirmed by the Appellate Authority as well as the Revisional Authority. It cannot be said that by doing so, any illegality has

been committed by them.

5. In my view, the petition deserves to be partly allowed. So far as the nature of land is concerned, the finding was recorded by the Mamlatdar and A.L.T. which was confirmed in the Appeal by the Dy. Collector. So far as the Revenue Tribunal is concerned, from the order, it is clear that no such point was argued before the Tribunal. In fact when review application was filed, disposing that application, the Tribunal observed that a point regarding the nature of land was not argued when the revision application was heard by the Tribunal. It is, therefore, not open to the learned counsel for the petitioner to raise such contention before this Court.

6. No doubt, reliance was placed on certificates issued by the Canal Officer and Executive Engineer, Irrigation Division, Bhavnagar, dtd. September 14, 1981 Annexure-A and B to the petition. In my view, however, when authorities had proceeded on the basis land to be irrigated land, in exercise of powers under Article 226/227 of the Constitution, this Court would not reappreciate the evidence to come to a different conclusion.

7. Regarding joint inquiry, obviously the point would have to be considered in the light of the facts and circumstances. The authorities have not recorded a finding that joint inquiry resulted into prejudice the petitioners. Looking to the order passed by the Appellate Authority, it is clear that though the said argument was advanced, no material whatsoever was placed on record to substantiate the argument. The Appellate Authority, therefore, rightly observed in the order that though the contention was raised that it had resulted in prejudice, nothing concrete was pointed out by the appellants as to how such inquiry was vitiated and prejudice was caused to the petitioner. Before Revenue Tribunal, again, no contention was raised and hence, that point also cannot be permitted to be raised in a petition under Article 226/227 of the Constitution.

8. So far as the provisions of Section 6 (3 B) of the Act are concerned, no such contention was raised before the Tribunal. The point cannot be said to be pure question of law unrelated to the facts of the case and hence such point cannot be permitted to be raised at this stage in the petition under Article 226/227 of the constitution.

9. Regarding the death of Manishankar, the

authorities below have considered the said fact and it was specifically observed that after the death of Manishankar, notices were issued and one Mr. Shashikant T. Vyas appeared as power of attorney holder and order was passed. In these circumstances, it cannot be said that there was no representation on behalf of the heirs and legal representatives of Manishankar.

10. The last point, however, has substance. It is clear if one reads the order passed on August 16. 1980 that on September 9, 1974 there were three pieces of land. From Survey No.107, a piece of land admeasuring 5 Acres and 11 Gunthas was sold to Patel Khoda Madha. Similarly, from Survey NO.20/1 and 20/2, two pieces of land, admeasuring 7 Acres and 0.2 Gunthas and 26 Gunthas were sold to Arjan Shambhu. A clear and categorical finding was recorded by the Mamlatdar and A.L.T. that to meet with the expenses of marriage ceremony of younger brother's daughter and because of financial problems due to drought, the lands were sold and there was no intention on the part of the owner to defeat the provisions of law. It is clear that in respect of one piece of land of 5 Acres and 11 Gunthas, benefit was given to the owner, but it was not given for other two pieces of land admeasuring 7 Acres and 28 Gunthas (7 Acre, 2 Gunthas and 26 Gunthas, respectively) It is, therefore, held that the owner would be entitled to such benefit and provisions of the Act would not apply to the land bearing Survey Nos. 20/1 and 20/2 to the extent of 7 Acres and .28 Gunthas (7.02 Gunthas and 26 Gunthas, respectively. The authorities will exclude the said land from the calculation of petitioners' holdings.

11. For the foregoing reasons, the petition deserves to be partly allowed and the same is allowed to the extent indicated above. In the facts and circumstances of the case, there shall be no order as to costs.

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